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BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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COMPUTER RESERVATIONS SYSTEM )  
(CRS) REGULATIONS )  
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Docket Nos. OST-97-2881, - 153  
OST-97-3014, and 21  
OST-98-4775- 68

COMMENTS OF QANTAS AIRWAYS, LIMITED

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DATED: September 22, 2000

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COMMENTS OF QANTAS AIRWAYS, LTD.

Qantas Airways, Ltd. ("Qantas") submits these comments to the United States Department of Transportation (the "Department" or "DOT") in response to the Department's July 24, 2000 Supplemental Advance Notice of Proposed Rulemaking ("SANPRM") concerning its Computer Reservations System ("CRS") Rules, 14 C.F.R. Part 255. 65 FR 45551 (July 24, 2000). These comments are intended to supplement those filed by Qantas in this proceeding on December 9, 1997.

The Department's July 24, 2000 SANPRM asks commenters to address the appropriate scope of the CRS Rules in light of certain market developments that have occurred since the original ANPRM was issued in September 1997. One of these developments is the trend toward non-airline ownership of CRSs. Until recently, all major CRSs have been owned by one or more airlines. Some CRSs, however, are now divesting themselves of airline ownership in favor of public or other non-airline ownership. At present, the CRS Rules only apply to CRSs that are airline-owned. A principal question posed by DOT, therefore, is whether the scope of the CRS Rules should be extended to cover non-airline-owned CRSs as well as airline-owned CRSs.

Qantas submits that the Rules should be extended to cover all CRSs, whether they are airline-owned or not.<sup>1</sup>

The CRS Rules Can And Should Apply to Non-Airline-Owned CRSs  
to the Same Extent That They Apply to Airline-Owned CRSs

As the Department explains in the July 24 SANPRM, one of the principal justifications for adopting the CRS Rules was that, absent federal regulation, an airline that owned a CRS would have both the ability and the incentive to manipulate its system to its competitive advantage in the downstream air transportation market and to the disadvantage of its airline competitors. See 65 FR 45551, at 45552. This rationale does not directly apply to non-airline CRS owners because non-airline owners do not compete in the downstream air transportation market and therefore arguably lack the incentive to manipulate their CRSs in competition-distorting ways.

In reality, however, a non-airline owner of a CRS has a very substantial incentive to engage in practices that distort competition in the air transportation market: it can increase its profits dramatically by selling bias and priority position to the highest bidders, or by entering into other types of commercial arrangements in which one or a group of airlines is favored in return for direct or indirect compensation or services (e.g., promotional services). Just such a phenomenon occurred before the adoption of the original CRS Rules in 1984, and there is no reason to believe it would not happen again. Indeed, non-airline-owned CRSs could start a veritable “arms race” among their airline participants, demanding escalating sums or services in exchange for favored positions. This would only increase the airlines’ distribution costs, thereby putting upward pressure on fares, and create new competitive obstacles for carriers that cannot

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<sup>1</sup> Another market development is the increasing use of the Internet as a medium for the sale of air transportation. Qantas does not separately address whether or how the CRS Rules should be applied in the Internet context at this time.

afford to, or choose not to, participate in such contests. Only by extending the protections of the CRS Rules to non-airline-owned CRSs can this inequity be avoided.

Without regulation of non-airline-owned CRSs, moreover, the market alone would be unable to restore a competitive balance between favored and disfavored carriers. The Internet may provide an alternative method of reaching some potential passengers, for example, but airlines will continue to be dependent upon CRSs for years to come. Internet sales still represent a very small portion of all air transportation sales, and they are highly unlikely to approach sales through CRS-connected travel agents anytime in the foreseeable future. Multi-carrier Internet sites do not by-pass CRSs in any event; every major site uses a CRS as at least a database. Absent regulation, a non-airline CRS owner could also lock travel agent subscribers into the use of its system through long-term contracts, minimum booking requirements, and other practices that are denied to airline-owned CRSs, thus perpetuating the competitive imbalance between favored and disfavored airlines.

The distinction between airline-owned and non-airline-owned CRSs is not necessarily a meaningful one in any event. An airline may divest itself of direct ownership of a CRS while retaining effective control over the system through contractual ties or other means. Control – with or without ownership – enables a carrier to continue to manipulate the CRS to its competitive advantage in the downstream market. Exempting a non-airline-owned CRS from the scope of the CRS Rules, even where one or more airlines continues to control it, could therefore result in the very type of anticompetitive impact the Rules were designed to prevent. But neither should the scope of the Rules turn on airline control, because a control relationship can take many diverse forms and is often far less obvious or easy to prove than ownership. Whether or not the CRS Rules apply to a particular system should not depend upon a factual investigation of any hidden strings through which the system may continue to be controlled by an airline. The

only practical and equitable solution, Qantas submits, is to apply the Rules equally to all CRSs, whether they are airline-owned or not.

There is little doubt that the Department has the legal authority to extend the CRS Rules to cover non-airline-owned CRSs. The Department's legal authority for issuing the existing CRS Rules is found at 49 U.S.C. § 41712, the current codification of Section 411 of the Federal Aviation Act. Section 411 provides in relevant part that "[T]he Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation" (emphasis added). A "ticket agent" is defined in 49 U.S.C. § 40102(a)(40) as one who "as principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation." Non-airline-owned CRSs clearly meet this definition: as agents of their participating carriers, they sell, offer to sell, provide, and arrange for air transportation. Alternatively, DOT could simply exercise its unquestioned jurisdiction over domestic and foreign airlines to prohibit them from selling tickets through non-airline-owned CRSs that engage in practices found to be unfair, deceptive, or anticompetitive.

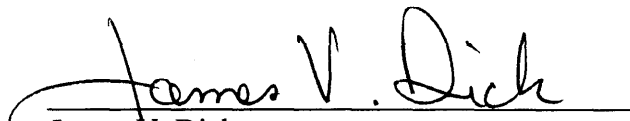
Conclusion

Qantas respectfully urges the Department to modify and reissue the CRS Rules in accordance with its December 1997 comments in this proceeding, and, for the reasons set forth above, to extend the applicability of the modified Rules to all CRSs, whether airline-owned or not.

Respectfully submitted,

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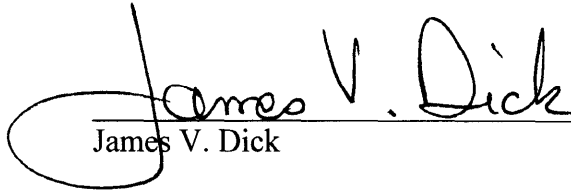
  
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I hereby certify that I have this 22<sup>nd</sup> day of September, 2000 served a copy of the foregoing Comments of Qantas Airways, Limited on all of the parties of record in Dockets OST-97-2881, OST-97-3014, and OST-98-4775, as identified on the attached service list.

  
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